98TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
98-1039

SOCIAL SECURITY DISABILITY BENEFITS REFORM ACT OF 1984

SEPTEMBER 19, 1984.—Ordered to be printed

Mr. ROSTENKOWSKI, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 3755]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3755) to amend titles II and XVI of the Social Security Act to provide for reform in the disability determination process, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Social Security Disability Benefits Reform Act of 1984".

TABLE OF CONTENTS

Sec. 1. Short title and table of contents.
Sec. 2. Standard of review for termination of disability benefits and periods of disability.
Sec. 3. Evaluation of pain.
Sec. 4. Multiple impairments.
Sec. 5. Moratorium on mental impairment reviews.
Sec. 6. Notice of reconsideration; prereview notice; demonstration projects.
Sec. 7. Continuation of benefits during appeal.
Sec. 8. Qualifications of medical professionals evaluating mental impairments.
Sec. 9. Consultative examinations; medical evidence.
Sec. 10. Uniform standards.
Sec. 11. Payment of costs of rehabilitation services.
Sec. 12. Advisory council study.

31-006 O

H783-18

Sec. 13. Qualifying experience for appointment of certain staff attorneys to administrative law judge positions.
Sec. 14. Supplemental security income benefits for individuals who perform substantial gainful activity despite severe medical impairment.
Sec. 15. Frequency of continuing eligibility reviews.
Sec. 16. Determination and monitoring of need for representative payee.
Sec. 17. Measures to improve compliance with Federal law.
Sec. 18. Separability.

STANDARD OF REVIEW FOR TERMINATION OF DISABILITY BENEFITS AND PERIODS OF DISABILITY

SEC. 2. (a) Section 223(f) of the Social Security Act is amended to read as follows:

"STANDARD OF REVIEW FOR TERMINATION OF DISABILITY BENEFITS

"(f) A recipient of benefits under this title or title XVIII based on the disability of any individual may be determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if such finding is supported by—

"(1) substantial evidence which demonstrates that—

"(A) there has been any medical improvement in the individual's impairment or combination of impairments (other than medical improvement which is not related to the individual's ability to work), and

"(B)(i) the individual is now able to engage in substantial gainful activity, or

"(ii) if the individual is a widow or surviving divorced wife under section 202(e) or a widower or surviving divorced husband under section 202(f), the severity of his or her impairment or impairments is no longer deemed, under regulations prescribed by the Secretary, sufficient to preclude the individual from engaging in gainful activity; or

"(2) substantial evidence which—

"(A) consists of new medical evidence and (in a case to which clause (ii)(II) does not apply) a new assessment of the individual's residual functional capacity, and demonstrates that—

"(i) although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology (related to the individual's ability to work), and

"(ii)(I) the individual is now able to engage in substantial gainful activity, or

"(II) if the individual is a widow or surviving divorced wife under section 202(e) or a widower or surviving divorced husband under section 202(f), the severity of his or her impairment or impairments is no longer deemed under regulations prescribed by the Secretary sufficient to preclude the individual from engaging in gainful activity, or

"(B) demonstrates that—

"(i) although the individual has not improved medically, he or she has undergone vocational therapy (related to the individual's ability to work), and

"(ii) the requirements of subclause (I) or (II) of subparagraph (A)(ii) are met; or

"(3) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that he or she was under a disability or continued to be under a disability, and that therefore—

"(A) the individual is able to engage in substantial gainful activity, or

"(B) if the individual is a widow or surviving divorced wife under section 202(e) or a widower or surviving divorced husband under section 202(f), the severity of his or her impairment or impairments is not deemed under regulations prescribed by the Secretary sufficient to preclude the individual from engaging in gainful activity; or

"(4) substantial evidence (which may be evidence on the record at the time any prior determination of the entitlement to benefits based on disability was made, or newly obtained evidence which relates to that determination) which demonstrates that a prior determination was in error.

Nothing in this subsection shall be construed to require a determination that a recipient of benefits under this title or title XVIII based on an individual's disability is entitled to such benefits if the prior determination was fraudulently obtained or if the individual is engaged in substantial gainful activity (or gainful activity in the case of a widow, surviving divorced wife, widower, or surviving divorced husband), cannot be located, or fails, without good cause, to cooperate in a review of the entitlement to such benefits or to follow prescribed treatment which would be expected to restore his or her ability to engage in substantial gainful activity (or gainful activity in the case of a widow, surviving divorced wife, widower, or surviving divorced husband). Any determination under this section shall be made on the basis of all the evidence available in the individual's case file, including new evidence concerning the individual's prior or current condition which is presented by the individual or secured by the Secretary. Any determination made under this section shall be made on the basis of the weight of the evidence and on a neutral basis with regard to the individual's condition, without any initial inference as to the presence or absence of disability being drawn from the fact that the individual has previously been determined to be disabled. For purposes of this subsection, a benefit under this title is based on an individual's disability if it is a disability insurance benefit, a child's, widow's, or widower's insurance benefit based on disability, or a mother's or father's insurance benefit based on the disability of the mother's or father's child who has attained age 16.".

(b) Section 216(i)(2)(D) of such Act is amended by adding at the end thereof the following: "The provisions set forth in section 223(f) with respect to determinations of whether entitlement to benefits under this title or title XVIII based on the disability of any individual is terminated (on the basis of a finding that the physical or

mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling) shall apply in the same manner and to the same extent with respect to determinations of whether a period of disability has ended (on the basis of a finding that the physical or mental impairment on the basis of which the finding of disability was made has ceased, does not exist, or is not disabling).''

(c) Section 1614(a) of such Act is amended by adding at the end thereof the following new paragraph:

''(5) A recipient of benefits based on disability under this title may be determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if such finding is supported by—

''(A) substantial evidence which demonstrates that—

''(i) there has been any medical improvement in the individual's impairment or combination of impairments (other than medical improvement which is not related to the individual's ability to work), and

''(ii) the individual is now able to engage in substantial gainful activity; or

''(B) substantial evidence (except in the case of an individual eligible to receive benefits under section 1619) which—

''(i) consists of new medical evidence and a new assessment of the individual's residual functional capacity, and demonstrates that—

''(I) although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology (related to the individual's ability to work), and

''(II) the individual is now able to engage in substantial gainful activity, or

''(ii) demonstrates that—

''(I) although the individual has not improved medically, he or she has undergone vocational therapy (related to the individual's ability to work), and

''(II) the individual is now able to engage in substantial gainful activity; or

''(C) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that he or she was under a disability or continued to be under a disability, and that therefore the individual is able to engage in substantial gainful activity; or

''(D) substantial evidence (which may be evidence on the record at the time any prior determination of the entitlement to benefits based on disability was made, or newly obtained evidence which relates to that determination) which demonstrates that a prior determination was in error.

Nothing in this paragraph shall be construed to require a determination that an individual receiving benefits based on disability

under this title is entitled to such benefits if the prior determination was fraudulently obtained or if the individual is engaged in substantial gainful activity, cannot be located, or fails, without good cause, to cooperate in a review of his or her entitlement or to follow prescribed treatment which would be expected to restore his or her ability to engage in substantial gainful activity. Any determination under this paragraph shall be made on the basis of all the evidence available in the individual's case file, including new evidence concerning the individual's prior or current condition which is presented by the individual or secured by the Secretary. Any determination made under this paragraph shall be made on the basis of the weight of the evidence and on a neutral basis with regard to the individual's condition, without any initial inference as to the presence or absence of disability being drawn from the fact that the individual has previously been determined to be disabled.".

(d)(1) The amendments made by this section shall apply only as provided in this subsection.

(2) The amendments made by this section shall apply to—

(A) determinations made by the Secretary on or after the date of the enactment of this Act;

(B) determinations with respect to which a final decision of the Secretary has not yet been made as of the date of the enactment of this Act and with respect to which a request for administrative review is made in conformity with the time limits, exhaustion requirements, and other provisions of section 205 of the Social Security Act and regulations of the Secretary;

(C) determinations with respect to which a request for judicial review was pending on September 19, 1984, and which involve an individual litigant or a member of a class in a class action who is identified by name in such pending action on such date; and

(D) determinations with respect to which a timely request for judicial review is or has been made by an individual litigant of a final decision of the Secretary made within 60 days prior to the date of the enactment of this Act.

In the case of determinations described in subparagraphs (C) and (D) in actions relating to medical improvement, the court shall remand such cases to the Secretary for review in accordance with the provisions of the Social Security Act as amended by this section.

(3) In the case of a recipient of benefits under title II, XVI, or XVIII of the Social Security Act—

(A) who has been determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits were provided has ceased, does not exist, or is not disabling, and

(B) who was a member of a class certified on or before September 19, 1984, in a class action relating to medical improvement pending on September 19, 1984, but was not identified by name as a member of the class on such date,

the court shall remand such case to the Secretary. The Secretary shall notify such individual by certified mail that he may request a review of the determination described in subparagraph (A) based on the provisions of this section and the provisions of the Social Securi-

ty Act as amended by this section. Such notification shall specify that the individual must request such review within 120 days after the date on which such notification is received. If such request is made in a timely manner, the Secretary shall make a review of the determination described in subparagraph (A) in accordance with the provisions of this section and the provisions of the Social Security Act as amended by this section. The amendments made by this section shall apply with respect to such review, and the determination described in subparagraph (A) (and any redetermination resulting from such review) shall be subject to further administrative and judicial review, only if such request is made in a timely manner.

(4) The decision by the Secretary on a case remanded by a court pursuant to this subsection shall be regarded as a new decision on the individual's claim for benefits, which supersedes the final decision of the Secretary. The new decision shall be subject to further administrative review and to judicial review only in conformity with the time limits, exhaustion requirements, and other provisions of section 205 of the Social Security Act and regulations issued by the Secretary in conformity with such section.

(5) No class in a class action relating to medical improvement may be certified after September 19, 1984, if the class action seeks judicial review of a decision terminating entitlement (or a period of disability) made by the Secretary of Health and Human Services prior to September 19, 1984.

(6) For purposes of this subsection, the term "action relating to medical improvement" means an action raising the issue of whether an individual who has had his entitlement to benefits under title II, XVI, or XVIII of the Social Security Act based on disability terminated (or period of disability ended) should not have had such entitlement terminated (or period of disability ended) without consideration of whether there has been medical improvement in the condition of such individual (or another individual on whose disability such entitlement is based) since the time of a prior determination that the individual was under a disability.

(e) Any individual whose case is remanded to the Secretary pursuant to subsection (d) or whose request for a review is made in a timely manner pursuant to subsection (d), may elect, in accordance with section 223(g) or 1631(a)(7) of the Social Security Act, to have payments made beginning with the month in which he makes such election, and ending as under such section 223(g) or 1631(a)(7). Notwithstanding such section 223(g) or 1631(a)(7), such payments (if elected)—

(1) shall be made at least until an initial redetermination is made by the Secretary; and

(2) shall begin with the payment for the month in which such individual makes such election.

(f) In the case of any individual who is found to be under a disability after a review required under this section, such individual shall be entitled to retroactive benefits beginning with benefits payable for the first month to which the most recent termination of benefits applied.

(g) The Secretary of Health and Human Services shall prescribe regulations necessary to implement the amendments made by this

section not later than 180 days after the date of the enactment of this Act.

EVALUATION OF PAIN

SEC. 3. (a)(1) Section 223(d)(5) of the Social Security Act is amended by inserting after the first sentence the following new sentences: "An individual's statement as to pain or other symptoms shall not alone be conclusive evidence of disability as defined in this section; there must be medical signs and findings, established by medically acceptable clinical or laboratory diagnostic techniques, which show the existence of a medical impairment that results from anatomical, physiological, or psychological abnormalities which could reasonably be expected to produce the pain or other symptoms alleged and which, when considered with all evidence required to be furnished under this paragraph (including statements of the individual or his physician as to the intensity and persistence of such pain or other symptoms which may reasonably be accepted as consistent with the medical signs and findings), would lead to a conclusion that the individual is under a disability. Objective medical evidence of pain or other symptoms established by medically acceptable clinical or laboratory techniques (for example, deteriorating nerve or muscle tissue) must be considered in reaching a conclusion as to whether the individual is under a disability.".

(2) Section 1614(a)(3)(H) of such Act (as added by section 8 of this Act) is amended by striking out "section 221(h)" and inserting in lieu thereof "sections 221(h) and 223(d)(5)".

(3) The amendments made by paragraphs (1) and (2) shall apply to determinations made prior to January 1, 1987.

(b)(1) The Secretary of Health and Human Services shall appoint a Commission on the Evaluation of Pain (hereafter in this section referred to as the "Commission") to conduct a study concerning the evaluation of pain in determining under titles II and XVI of the Social Security Act whether an individual is under a disability. Such study shall be conducted in consultation with the National Academy of Sciences.

(2) The Commission shall consist of at least twelve experts, including a significant representation from the field of medicine who are involved in the study of pain, and representation from the fields of law, administration of disability insurance programs, and other appropriate fields of expertise.

(3) The Commission shall be appointed by the Secretary of Health and Human Services (without regard to the requirements of the Federal Advisory Committee Act) within 60 days after the date of the enactment of this Act. The Secretary shall from time to time appoint one of the members to serve as Chairman. The Commission shall meet as often as the Secretary deems necessary.

(4) Members of the Commission shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Members who are not employees of the United States, while attending meetings of the Commission or otherwise serving on the business of the Commission, shall be paid at a rate equal to the per diem equivalent of the rate provided for level IV of the Executive Schedule under section 5315 of title 5,

United States Code, for each day, including traveltime, during which they are engaged in the actual performance of duties vested in the Commission. While engaged in the performance of such duties away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(5) The Commission may engage such technical assistance from individuals skilled in medical and other aspects of pain as may be necessary to carry out its functions. The Secretary shall make available to the Commission such secretarial, clerical, and other assistance and any pertinent data prepared by the Department of Health and Human Services as the Commission may require to carry out its functions.

(6) The Secretary shall submit the results of the study under paragraph (1), together with any recommendations, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than December 31, 1985. The Commission shall terminate at the time such results are submitted.

MULTIPLE IMPAIRMENTS

SEC. 4. (a)(1) Section 223(d)(2) of the Social Security Act is amended by adding at the end thereof the following new subparagraph:

> *"(C) In determining whether an individual's physical or mental impairment or impairments are of a sufficient medical severity that such impairment or impairments could be the basis of eligibility under this section, the Secretary shall consider the combined effect of all of the individual's impairments without regard to whether any such impairment, if considered separately, would be of such severity. If the Secretary does find a medically severe combination of impairments, the combined impact of the impairments shall be considered throughout the disability determination process.".*

(2) The third sentence of section 216(i)(1) of such Act is amended by inserting "(2)(C)," after "(2)(A),".

(b) Section 1614(a)(3) of such Act is amended by adding at the end thereof the following new subparagraph:

"(G) In determining whether an individual's physical or mental impairment or impairments are of a sufficient medical severity that such impairment or impairments could be the basis of eligibility under this section, the Secretary shall consider the combined effect of all of the individual's impairments without regard to whether any such impairment, if considered separately, would be of such severity. If the Secretary does find a medically severe combination of impairments, the combined impact of the impairments shall be considered throughout the disability determination process.".

(c) The amendments made by this section shall apply with respect to determinations made on or after the first day of the first month beginning after 30 days after the date of the enactment of this Act.

MORATORIUM ON MENTAL IMPAIRMENT REVIEWS

SEC. 5. (a) The Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall revise the criteria

embodied under the category "Mental Disorders" in the "Listing of Impairments" in effect on the date of the enactment of this Act under appendix 1 to subpart P of part 404 of title 20 of the Code of Federal Regulations. The revised criteria and listings, alone and in combination with assessments of the residual functional capacity of the individuals involved, shall be designed to realistically evaluate the ability of a mentally impaired individual to engage in substantial gainful activity in a competitive workplace environment. Regulations establishing such revised criteria and listings shall be published no later than 120 days after the date of the enactment of this Act.

(b)(1) Until such time as revised criteria have been established by regulation in accordance with subsection (a), no continuing eligibility review shall be carried out under section 221(i) of the Social Security Act, or under the corresponding requirements established for disability determinations and reviews under title XVI of such Act, with respect to any individual previously determined to be under a disability by reason of a mental impairment, if—

(A) no initial decision on such review has been rendered with respect to such individual prior to the date of the enactment of this Act, or

(B) an initial decision on such review was rendered with respect to such individual prior to the date of the enactment of this Act but a timely appeal from such decision was filed or was pending on or after June 7, 1983.

For purposes of this paragraph and subsection (c)(1) the term "continuing eligibility review", when used to refer to a review of a previous determination of disability, includes any reconsideration of or hearing on the initial decision rendered in such review as well as such initial decision itself, and any review by the Appeals Council of the hearing decision.

(2) Paragraph (1) shall not apply in any case where the Secretary determines that fraud was involved in the prior determination, or where an individual (other than an individual eligible to receive benefits under section 1619 of the Social Security Act) is determined by the Secretary to be engaged in substantial gainful activity (or gainful activity, in the case of a widow, surviving divorced wife, widower, or surviving divorced husband for purposes of section 202(e) and (f) of such Act).

(c)(1) Any initial determination that an individual is not under a disability by reason of a mental impairment and any determination that an individual is not under a disability by reason of a mental impairment in a reconsideration of or hearing on an initial disability determination, made or held under title II or XVI of the Social Security Act after the date of the enactment of this Act and prior to the date on which revised criteria are established by regulation in accordance with subsection (a), and any determination that an individual is not under a disability by reason of a mental impairment made under or in accordance with title II or XVI of such Act in a reconsideration of, hearing on, review by the Appeals Council of, or judicial review of a decision rendered in any continuing eligibility review to which subsection (b)(1) applies, shall be redetermined by

the Secretary as soon as feasible after the date on which such criteria are so established, applying such revised criteria.

(2) In the case of a redetermination under paragraph (1) of a prior action which found that an individual was not under a disability, if such individual is found on redetermination to be under a disability, such redetermination shall be applied as though it had been made at the time of such prior action.

(3) Any individual with a mental impairment who was found to be not disabled pursuant to an initial disability determination or a continuing eligibility review between March 1, 1981, and the date of the enactment of this Act, and who reapplies for benefits under title II or XVI of the Social Security Act, may be determined to be under a disability during the period considered in the most recent prior determination. Any reapplication under this paragraph must be filed within one year after the date of the enactment of this Act, and benefits payable as a result of the preceding sentence shall be paid only on the basis of the reapplication.

NOTICE OF RECONSIDERATION; PREREVIEW NOTICE; DEMONSTRATION PROJECTS

SEC. 6. (a) Section 221(i) of the Social Security Act is amended by adding at the end thereof the following new paragraph:

"(4) In any case in which the Secretary initiates a review under this subsection of the case of an individual who has been determined to be under a disability, the Secretary shall notify such individual of the nature of the review to be carried out, the possibility that such review could result in the termination of benefits, and the right of the individual to provide medical evidence with respect to such review.".

(b) Section 1633 of such Act is amended by adding at the end thereof the following new subsection:

"(c) In any case in which the Secretary initiates a review under this title, similar to the continuing disability reviews authorized for purposes of title II under section 221(i), the Secretary shall notify the individual whose case is to be reviewed in the same manner as required under section 221(i)(4).".

(c) The Secretary shall institute a system of notification required by the amendments made by subsections (a) and (b) as soon as is practicable after the date of the enactment of this Act.

(d) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act, implement demonstration projects in which the opportunity for a personal appearance prior to a determination of ineligibility for persons reviewed under section 221(i) of the Social Security Act is substituted for the face to face evidentiary hearing required by section 205(b)(2) of such Act. Such demonstration projects shall be conducted in not fewer than five States, and shall also include disability determinations with respect to individuals reviewed under title XVI of such Act. The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning such demonstration projects, together with any recommendations, not later than December 31, 1986.

(e) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act, implement demonstration projects in which the opportunity for a personal appearance is provided the applicant prior to initial disability determinations under subsections (a), (c), and (g) of section 221 of the Social Security Act, and prior to initial disability determinations on applications for benefits under title XVI of such Act. Such demonstration projects shall be conducted in not fewer than five States. The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning such demonstration projects, together with any recommendations, not later than December 31, 1986.

CONTINUATION OF BENEFITS DURING APPEAL

SEC. 7. (a)(1) Section 223(g)(1) of the Social Security Act is amended—

(A) in the matter following subparagraph (C), by striking out "and the payment of any other benefits under this Act based on such individual's wages and self-employment income (including benefits under title XVIII)," and inserting in lieu thereof ", the payment of any other benefits under this title based on such individual's wages and self-employment income, the payment of mother's or father's insurance benefits to such individual's mother or father based on the disability of such individual as a child who has attained age 16, and the payment of benefits under title XVIII based on such individual's disability,"; and

(B) in clause (iii) by striking out "June 1984" and inserting in lieu thereof "June 1988".

(2) Section 223(g)(3)(B) of such Act is amended by striking out "December 7, 1983" and inserting in lieu thereof "January 1, 1988".

(b) Section 1631(a) of such Act is amended by adding at the end thereof the following new paragraph:

"(7)(A) In any case where—

"(i) an individual is a recipient of benefits based on disability or blindness under this title,

"(ii) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and as a consequence such individual is determined not to be entitled to such benefits, and

"(iii) a timely request for review or for a hearing is pending with respect to the determination that he is not so entitled,

such individual may elect (in such manner and form and within such time as the Secretary shall by regulations prescribe) to have the payment of such benefits continued for an additional period beginning with the first month beginning after the date of the enactment of this paragraph for which (under such determination) such benefits are no longer otherwise payable, and ending with the earlier of (I) the month preceding the month in which a decision is made after such a hearing, or (II) the month preceding the month in which no such request for review or a hearing is pending.

"(B)(i) If an individual elects to have the payment of his benefits continued for an additional period under subparagraph (A), and the final decision of the Secretary affirms the determination that he is

BEST COPY AVAILABLE

not entitled to such benefits, any benefits paid under this title pursuant to such election (for months in such additional period) shall be considered overpayments for all purposes of this title, except as otherwise provided in clause (ii).

"(ii) If the Secretary determines that the individual's appeal of his termination of benefits was made in good faith, all of the benefits paid pursuant to such individual's election under subparagraph (A) shall be subject to waiver consideration under the provisions of subsection (b)(1).

"(C) The provisions of subparagraphs (A) and (B) shall apply with respect to determinations (that individuals are not entitled to benefits) which are made on or after the date of the enactment of this paragraph, or prior to such date but only on the basis of a timely request for review or for a hearing.".

(c)(1) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act, conduct a study concerning the effect which the enactment and continued operation of section 223(g) of the Social Security Act is having on expenditures from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund, and the rate of appeals to administrative law judges of unfavorable determinations relating to disability or periods of disability.

(2) The Secretary shall submit the results of the study under paragraph (1), together with any recommendations, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than July 1, 1986.

QUALIFICATIONS OF MEDICAL PROFESSIONALS EVALUATING MENTAL IMPAIRMENTS

SEC. 8. (a) Section 221 of the Social Security Act is amended by inserting after subsection (g) the following new subsection:

"(h) An initial determination under subsection (a), (c), (g), or (i) that an individual is not under a disability, in any case where there is evidence which indicates the existence of a mental impairment, shall be made only if the Secretary has made every reasonable effort to ensure that a qualified psychiatrist or psychologist has completed the medical portion of the case review and any applicable residual functional capacity assessment.".

(b) Section 1614(a)(3) of such Act (as amended by section 4 of this Act) is further amended by adding at the end thereof the following new subparagraph:

"(H) In making determinations with respect to disability under this title, the provisions of section 221(h) shall apply in the same manner as they apply to determinations of disability under title II.".

(c) The amendments made by this section shall apply to determinations made after 60 days after the date of the enactment of this Act.

CONSULTATIVE EXAMINATIONS; MEDICAL EVIDENCE

SEC. 9. (a)(1) Section 221 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(j) The Secretary shall prescribe regulations which set forth, in detail—

"(1) the standards to be utilized by State disability determination services and Federal personnel in determining when a consultative examination should be obtained in connection with disability determinations;

"(2) standards for the type of referral to be made; and

"(3) procedures by which the Secretary will monitor both the referral processes used and the product of professionals to whom cases are referred.

Nothing in this subsection shall be construed to preclude the issuance, in accordance with section 553(b)(A) of title 5, United States Code, of interpretive rules, general statements of policy, and rules of agency organization relating to consultative examinations if such rules and statements are consistent with such regulations.".

(2) The Secretary of Health and Human Services shall prescribe regulations required under section 221(j) of the Social Security Act not later than 180 days after the date of the enactment of this Act.

(b)(1) Section 223(d)(5) of the Social Security Act is amended by inserting "(A)" after "(5)" and by adding at the end thereof the following new subparagraph:

"(B) In making any determination with respect to whether an individual is under a disability or continues to be under a disability, the Secretary shall consider all evidence available in such individual's case record, and shall develop a complete medical history of at least the preceding twelve months for any case in which a determination is made that the individual is not under a disability. In making any determination the Secretary shall make every reasonable effort to obtain from the individual's treating physician (or other treating health care provider) all medical evidence, including diagnostic tests, necessary in order to properly make such determination, prior to evaluating medical evidence obtained from any other source on a consultative basis.".

(2) The amendments made by this subsection shall apply to determinations made on or after the date of the enactment of this Act.

UNIFORM STANDARDS

SEC. 10. (a) Section 221 of the Social Security Act (as amended by section 9 of this Act) is further amended by adding at the end thereof the following new subsection:

"(k)(1) The Secretary shall establish by regulation uniform standards which shall be applied at all levels of determination, review, and adjudication in determining whether individuals are under disabilities as defined in section 216(i) or 223(d).

"(2) Regulations promulgated under paragraph (1) shall be subject to the rulemaking procedures established under section 553 of title 5, United States Code.".

(b) Section 1614(a)(3)(H) of such Act (as added by section 8 of this Act and amended by section 3 of this Act) is further amended by

striking out "sections 221(h) and 223(d)(5)" and inserting in lieu thereof "sections 221(h), 221(k), and 223(d)(5)".

PAYMENT OF COSTS OF REHABILITATION SERVICES

SEC. 11. (a)(1) The first sentence of section 222(d)(1) of the Social Security Act is amended—

(A) by striking out "into substantial gainful activity"; and

(B) by striking out "which result in their performance of substantial gainful activity which lasts for a continuous period of nine months" and inserting in lieu thereof the following: "(i) in cases where the furnishing of such services results in the performance by such individuals of substantial gainful activity for a continuous period of nine months, (ii) in cases where such individuals receive benefits as a result of section 225(b) (except that no reimbursement under this paragraph shall be made for services furnished to any individual receiving such benefits for any period after the close of such individual's ninth consecutive month of substantial gainful activity or the close of the month in which his or her entitlement to such benefits ceases, whichever first occurs), and (iii) in cases where such individuals, without good cause, refuse to continue to accept vocational rehabilitation services or fail to cooperate in such a manner as to preclude their successful rehabilitation".

(2) The second sentence of section 222(d)(1) of such Act is amended by striking out "of such individuals to substantial gainful activity" and inserting in lieu thereof "of an individual to substantial gainful activity, the determination that an individual, without good cause, refused to continue to accept vocational rehabilitation services or failed to cooperate in such a manner as to preclude successful rehabilitation,".

(b)(1) The first sentence of section 1615(d) of such Act is amended by striking out "if such services result in their performance of substantial gainful activity which lasts for a continuous period of nine months" and inserting in lieu thereof the following: "(1) in cases where the furnishing of such services results in the performance by such individuals of substantial gainful activity for a continuous period of nine months, (2) in cases where such individuals receive benefits as a result of section 1631(a)(6) (except that no reimbursement under this subsection shall be made for services furnished to any individual receiving such benefits for any period after the close of such individual's ninth consecutive month of substantial gainful activity or the close of the month with which his or her entitlement to such benefits ceases, whichever first occurs), and (3) in cases where such individuals, without good cause, refuse to continue to accept vocational rehabilitation services or fail to cooperate in such a manner as to preclude their successful rehabilitation".

(2) The second sentence of section 1615(d) of such Act is amended by inserting after "The determination" the following: "that the vocational rehabilitation services contributed to the successful return of an individual to substantial gainful activity, the determination that an individual, without good cause, refused to continue to accept vocational rehabilitation services or failed to cooperate in

such a manner as to preclude successful rehabilitation, and the determination".

(c) The amendments made by this section shall apply with respect to individuals who receive benefits as a result of section 225(b) or section 1631(a)(6) of the Social Security Act, or who refuse to continue to accept rehabilitation services or fail to cooperate in an approved vocational rehabilitation program, in or after the first month following the month in which this Act is enacted.

ADVISORY COUNCIL STUDY

SEC. 12. (a) The Secretary of Health and Human Services shall appoint the members of the next Advisory Council on Social Security pursuant to section 706 of the Social Security Act prior to June 1, 1985.

(b)(1) The Advisory Council shall include in its review and report, studies and recommendations with respect to the medical and vocational aspects of disability, including studies and recommendations relating to—

(A) the effectiveness of vocational rehabilitation programs for recipients of disability insurance benefits or supplemental security income benefits;

(B) the question of using specialists for completing medical and vocational evaluations at the State agency level in the disability determination process, including the question of requiring, in cases involving impairments other than mental impairments, that the medical portion of each case review (as well as any applicable assessment of residual functional capacity) be completed by an appropriate medical specialist employed by the State agency before any determination can be made with respect to the impairment involved;

(C) alternative approaches to work evaluation in the case of applicants for benefits based on disability under title XVI and recipients of such benefits undergoing reviews of their cases, including immediate referral of any such applicant or recipient to a vocational rehabilitation agency for services at the same time he or she is referred to the appropriate State agency for a disability determination;

(D) the feasibility and appropriateness of providing work evaluation stipends for applicants for and recipients of benefits based on disability under title XVI in cases where extended work evaluation is needed prior to the final determination of their eligibility for such benefits or for further rehabilitation and related services;

(E) the standards, policies, and procedures which are applied or used by the Secretary of Health and Human Services with respect to work evaluations in order to determine whether such standards, policies, and procedures will provide appropriate screening criteria for work evaluation referrals in the case of applicants for and recipients of benefits based on disability under title XVI; and

(F) possible criteria for assessing the probability that an applicant for or recipient of benefits based on disability under title XVI will benefit from rehabilitation services, taking into

consideration not only whether the individual involved will be able after rehabilitation to engage in substantial gainful activity but also whether rehabilitation services can reasonably be expected to improve the individual's functioning so that he or she will be able to live independently or work in a sheltered environment.

(2) For purposes of this subsection, "work evaluation" includes (with respect to any individual) a determination of—

(A) such individual's skills,

(B) the work activities or types of work activity for which such individual's skills are insufficient or inadequate,

(C) the work activities or types of work activity for which such individual might potentially be trained or rehabilitated,

(D) the length of time for which such individual is capable of sustaining work (including, in the case of the mentally impaired, the ability to cope with the stress of competitive work), and

(E) any modifications which may be necessary, in work activities for which such individual might be trained or rehabilitated, in order to enable him or her to perform such activities.

(c) The Advisory Council may convene task forces of experts to consider and comment upon specialized issues.

QUALIFYING EXPERIENCE FOR APPOINTMENT OF CERTAIN STAFF ATTORNEYS TO ADMINISTRATIVE LAW JUDGE POSITIONS

SEC. 13. The Secretary of Health and Human Services shall, within 120 days after the date of enactment of this Act, submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on actions taken by the Secretary to establish positions which enable staff attorneys to gain the qualifying experience and quality of experience necessary to compete for the position of administrative law judge under section 3105 of title 5, United States Code.

SUPPLEMENTAL SECURITY INCOME BENEFITS FOR INDIVIDUALS WHO PERFORM SUBSTANTIAL GAINFUL ACTIVITY DESPITE SEVERE MEDICAL IMPAIRMENT

SEC. 14. (a) Section 201(d) of the Social Security Disability Amendments of 1980 is amended by striking out "shall remain in effect only for a period of three years after such effective date" and inserting in lieu thereof "shall remain in effect only through June 30, 1987".

(b) Section 1619 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(c) The Secretary of Health and Human Services and the Secretary of Education shall jointly develop and disseminate information, and establish training programs for staff personnel, with respect to the potential availability of benefits and services for disabled individuals under the provisions of this section. The Secretary of Health and Human Services shall provide such information to individuals who are applicants for and recipients of benefits based on disability under this title and shall conduct such programs for the staffs of the district offices of the Social Security Administra-

tion. The Secretary of Education shall conduct such programs for the staffs of the State Vocational Rehabilitation agencies, and in cooperation with such agencies shall also provide such information to other appropriate individuals and to public and private organizations and agencies which are concerned with rehabilitation and social services or which represent the disabled.".

FREQUENCY OF CONTINUING ELIGIBILITY REVIEWS

SEC. 15. The Secretary of Health and Human Services shall promulgate final regulations, within 180 days after the date of the enactment of this Act, which establish the standards to be used by the Secretary in determining the frequency of reviews under section 221(i) of the Social Security Act. Until such regulations have been issued as final regulations, no individual may be reviewed more than once under section 221(i) of the Social Security Act.

DETERMINATION AND MONITORING OF NEED FOR REPRESENTATIVE PAYEE

SEC. 16. (a) Section 205(j) of the Social Security Act is amended by inserting "(1)" after "(j)" and by adding at the end thereof the following new paragraphs:

"(2) Any certification made under paragraph (1) for payment to a person other than the individual entitled to such payment must be made on the basis of an investigation, carried out either prior to such certification or within forty-five days after such certification, and on the basis of adequate evidence that such certification is in the interest of the individual entitled to such payment (as determined by the Secretary in regulations). The Secretary shall ensure that such certifications are adequately reviewed.

"(3)(A) In any case where payment under this title is made to a person other than the individual entitled to such payment, the Secretary shall establish a system of accountability monitoring whereby such person shall report not less often than annually with respect to the use of such payments. The Secretary shall establish and implement statistically valid procedures for reviewing such reports in order to identify instances in which such persons are not properly using such payments.

"(B) Subparagraph (A) shall not apply in any case where the other person to whom such payment is made is a parent or spouse of the individual entitled to such payment who lives in the same household as such individual. The Secretary shall require such parent or spouse to verify on a periodic basis that such parent or spouse continues to live in the same household as such individual.

"(C) Subparagraph (A) shall not apply in any case where the other person to whom such payment is made is a State institution. In such cases, the Secretary shall establish a system of accountability monitoring for institutions in each State.

"(D) Subparagraph (A) shall not apply in any case where the individual entitled to such payment is a resident of a Federal institution and the other person to whom such payment is made is the institution.

"(E) Notwithstanding subparagraphs (A), (B), (C), and (D), the Secretary may require a report at any time from any person receiv-

ing payments on behalf of another, if the Secretary has reason to believe that the person receiving such payments is misusing such payments.

"(4)(A) The Secretary shall make an initial report to each House of the Congress on the implementation of paragraphs (2) and (3) within 270 days after the date of the enactment of this paragraph.

"(B) The Secretary shall include as a part of the annual report required under section 704, information with respect to the implementation of paragraphs (2) and (3), including the number of cases in which the payee was changed, the number of cases discovered where there has been a misuse of funds, how any such cases were dealt with by the Secretary, the final disposition of such cases, including any criminal penalties imposed, and such other information as the Secretary determines to be appropriate.".

(b) Section 1631(a)(2) of such Act is amended by inserting "(A)" after "(2)" and by adding at the end thereof the following new subparagraphs:

"(B) Any determination made under subparagraph (A) that payment should be made to a person other than the individual or spouse entitled to such payment must be made on the basis of an investigation, carried out either prior to such determination or within forty-five days after such determination, and on the basis of adequate evidence that such determination is in the interest of the individual or spouse entitled to such payment (as determined by the Secretary in regulations). The Secretary shall ensure that such determinations are adequately reviewed.

"(C)(i) In any case where payment is made under this title to a person other than the individual or spouse entitled to such payment, the Secretary shall establish a system of accountability monitoring whereby such person shall report not less often than annually with respect to the use of such payments. The Secretary shall establish and implement statistically valid procedures for reviewing such reports in order to identify instances in which such persons are not properly using such payments.

"(ii) Clause (i) shall not apply in any case where the other person to whom such payment is made is a parent or spouse of the individual entitled to such payment who lives in the same household as such individual. The Secretary shall require such parent or spouse to verify on a periodic basis that such parent or spouse continues to live in the same household as such individual.

"(iii) Clause (i) shall not apply in any case where the other person to whom such payment is made is a State institution. In such cases, the Secretary shall establish a system of accountability monitoring for institutions in each State.

"(iv) Clause (i) shall not apply in any case where the individual entitled to such payment is a resident of a Federal institution and the other person to whom such payment is made is the institution.

"(v) Notwithstanding clauses (i), (ii), (iii), and (iv), the Secretary may require a report at any time from any person receiving payments on behalf of another, if the Secretary has reason to believe that the person receiving such payments is misusing such payments.

"(D) The Secretary shall make an initial report to each House of the Congress on the implementation of subparagraphs (B) and (C) within 270 days after the date of the enactment of this subpara-

graph. The Secretary shall include in the annual report required under section 704, information with respect to the implementation of subparagraphs (B) and (C), including the same factors as are required to be included in the Secretary's report under section 205(j)(4)(B).".

(c)(1) Section 1632 of the Social Security Act is amended by inserting "(a)" after "Sec. 1632." and by adding at the end thereof the following new subsection:

"(b)(1) Any person or other entity who is convicted of a violation of any of the provisions of paragraphs (1) through (4) of subsection (a), if such violation is committed by such person or entity in his role as, or in applying to become, a payee under section 1631(a)(2) on behalf of another individual (other than such person's eligible spouse), in lieu of the penalty set forth in subsection (a)—

"(A) upon his first such conviction, shall be guilty of a misdemeanor and shall be fined not more than $5,000 or imprisoned for not more than one year, or both; and

"(B) upon his second or any subsequent such conviction, shall be guilty of a felony and shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

"(2) In any case in which the court determines that a violation described in paragraph (1) includes a willful misuse of funds by such person or entity, the court may also require that full or partial restitution of such funds be made to the individual for whom such person or entity was the certified payee.

"(3) Any person or entity convicted of a felony under this section or under section 208 may not be certified as a payee under section 1631(a)(2).".

(2) Section 208 of such Act is amended by adding at the end thereof the following unnumbered paragraphs:

"Any person or other entity who is convicted of a violation of any of the provisions of this section, if such violation is committed by such person or entity in his role as, or in applying to become, a certified payee under section 205(j) on behalf of another individual (other than such person's spouse), upon his second or any subsequent such conviction shall, in lieu of the penalty set forth in the preceding provisions of this section, be guilty of a felony and shall be fined not more than $25,000 or imprisoned for not more than five years, or both. In the case of any violation described in the preceding sentence, including a first such violation, if the court determines that such violation includes a willful misuse of funds by such person or entity, the court may also require that full or partial restitution of such funds be made to the individual for whom such person or entity was the certified payee.

"Any individual or entity convicted of a felony under this section or under section 1632(b) may not be certified as a payee under section 205(j).".

(d) The amendments made by this section shall become effective on the date of the enactment of this Act, and, in the case of the amendments made by subsection (c), shall apply with respect to violations occurring on or after such date.

MEASURES TO IMPROVE COMPLIANCE WITH FEDERAL LAW

SEC. 17. (a)(1) Section 221(b)(1) of the Social Security Act is amended to read as follows:

"(b)(1)(A) Upon receiving information indicating that a State agency may be substantially failing to make disability determinations in a manner consistent with regulations and other written guidelines issued by the Secretary, the Secretary shall immediately conduct an investigation and, within 21 days after the date on which such information is received, shall make a preliminary finding with respect to whether such agency is in substantial compliance with such regulations and guidelines. If the Secretary finds that an agency is not in substantial compliance with such regulations and guidelines, the Secretary shall, on the date such finding is made, notify such agency of such finding and request assurances that such agency will promptly comply with such regulations and guidelines.

"(B)(i) Any agency notified of a preliminary finding made pursuant to subparagraph (A) shall have 21 days from the date on which such finding was made to provide the assurances described in subparagraph (A).

"(ii) The Secretary shall monitor the compliance with such regulations and guidelines of any agency providing such assurances in accordance with clause (i) for the 30-day period beginning on the day after the date on which such assurances have been provided.

"(C) If the Secretary determines that an agency monitored in accordance with clause (ii) of subparagraph (B) has not substantially complied with such regulations and guidelines during the period for which such agency was monitored, or if an agency notified pursuant to subparagraph (A) fails to provide assurances in accordance with clause (i) of subparagraph (B), the Secretary shall, within 60 days after the date on which a preliminary finding was made with respect to such agency under subparagraph (A), (or within 90 days after such date, if, at the discretion of the Secretary, such agency is granted a hearing by the Secretary on the issue of the noncompliance of such agency) make a final determination as to whether such agency is substantially complying with such regulations and guidelines. Such determination shall not be subject to judicial review.

"(D)(i) If the Secretary makes a final determination pursuant to subparagraph (C) with respect to any agency that the agency is not substantially complying with such regulations and guidelines, the Secretary shall, as soon as possible but not later than 180 days after the date of such final determination, make the disability determinations referred to in subsection (a)(1), complying with the requirements of paragraph (3) to the extent that such compliance is possible within such 180-day period. In order to carry out this subparagraph, the Secretary shall, as the Secretary finds necessary, exceed any applicable personnel ceilings and waive any applicable hiring restrictions. In addition, to the extent feasible within the 180-day period after the final determination, the Secretary, in conjunction with the Secretary of Labor, shall assure the statutory protections of State agency employees not hired by the Secretary.

"(ii) During the 180-day period specified in clause (i), the Secretary shall take such actions as may be necessary to assure that any

case with respect to which a determination referred to in subsection (a)(1) was made by an agency, during the period for which such agency was not in substantial compliance with the applicable regulations and guidelines, was decided in accordance with such regulations and guidelines.".

(2) Section 221(a)(1) of such Act is amended by striking out "subsection (b)(1)" and inserting in lieu thereof "subsection (b)(1)(C)".

(3)(A) Section 221(b)(3)(A) of such Act is amended by striking out "The Secretary" and inserting in lieu thereof "Except as provided in subparagraph (D)(i) of paragraph (1), the Secretary".

(B) Section 221(b)(3)(B) of such Act is amended by striking out "The Secretary" and inserting in lieu thereof "Except as provided in subparagraph (D)(i) of paragraph (1), the Secretary".

(4) Section 221(d) of such Act is amended by striking out "Any individual" and inserting in lieu thereof "Except as provided in subsection (b)(1)(D), any individual".

(b) The amendments made by subsection (a) of this section shall become effective on the date of the enactment of this Act and shall expire on December 31, 1987. The provisions of the Social Security Act amended by subsection (a) of this section (as such provisions were in effect immediately before the date of the enactment of this Act) shall be effective after December 31, 1987.

SEPARABILITY

SEC. 18. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

And the Senate agree to the same.

That the Senate recede from its amendment to the title of the bill.

DAN ROSTENKOWSKI,
J.J. PICKLE,
ANDREW JACOBS, Jr.,
RICHARD A. GEPHARDT,
JIM SHANNON,
WYCHE FOWLER, Jr.,
HAROLD FORD,
BARBER B. CONABLE, Jr.,
BILL ARCHER,
WILLIS D. GRADISON, Jr.,
CARROLL CAMPBELL,
Managers on the Part of the House.

BOB DOLE,
BOB PACKWOOD,
BILL ROTH,
JOHN C. DANFORTH,
RUSSELL B. LONG,
LLOYD BENTSEN,
D.P. MOYNIHAN,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3755) to amend titles II and XVI of the Social Security Act to provide for reform in the disability determination process, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment to the text of the bill struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

1. Standard of Review for Termination of Disability Benefits

Present law

To be eligible for disability benefits, a person must be unable, by reason of a medically determinable impairment expected to last at least 12 months or to end in death, to perform any substantial gainful activity (SGA) that exists in the national economy, considering his or her age, education and work experience. The impairment must be "demonstrable by medically acceptable clinical and laboratory diagnostic techniques." This definition applies both to new applicants and to beneficiaries whose eligibility is being reviewed. No other statutory standards exist for the review of beneficiaries.

House bill

Establishes a standard for reviewing eligibility of disability beneficiaries that allows benefits to be terminated only if there is substantial evidence that the beneficiary can perform SGA as a result of (a) medical improvement in his disabling condition, or (b) medical or vocational therapy technological or advances, as shown by new medical evidence and new assessment of residual functional capacity, or (c) vocational therapy or (d) a less disabling impairment than originally thought, as shown by new or improved diagnostic techniques or evaluations.

Benefits could also be terminated if evidence on the record at the time of the earlier determination or new evidence shows that the

prior determination was either clearly erroneous or fraudulently obtained, or that the beneficiary is performing SGA.

In cases where there is no evidence to support the prior decision (i.e. a lost file) the Secretary would not be precluded from securing additional medical reports in order to reconstruct that decision.

Title XVI is amended to provide that the same standard of review shall apply to SSI recipients (except that the exclusions which allow termination as the result of medical or vocational therapy (described in (b) and (c) above) do not apply to individuals receiving section 1619 special benefits).

No provisions for date of implementing regulations or expiration.

Effective date. Applies to all cases involving disability determinations pending in the Department or in Court on the date of enactment or initiated on or after that date.

Senate amendment

Benefits may be terminated if beneficiary can perform SGA unless the Secretary finds there has been no medical improvement. If the evidence establishes that there has been no medical improvement (other than improvement which is not related to his ability to work), benefits may be terminated only if Secretary can show (a) beneficiary has benefited from medical or vocational therapy or technology, (b) new or improved diagnostic or evaluative techniques indicate impairment(s) is not as disabling as believed at time of last decision, (c) a prior determination was fraudulently obtained, or (d) there is demonstrated substantial reason to believe a prior determination of eligibility was erroneous.

Benefits may be terminated for performance of SGA or if the individual fails, without good cause, to cooperate in the review or follow prescribed treatment, or cannot be located.

In making determination, Secretary shall consider the evidence in the file as well as any additional information concerning claimant's current or prior condition secured by Secretary or provided by claimant.

In the case of a finding relating to medical improvement, provides that burden of proof is on claimant. In other words, for benefits to be continued on this basis, individual must state and evidence in file must show that medical condition is same as or worse than at time of last decision (or, if there is medical improvement, it is not related to work ability).

Title XVI is amended to provide that the same procedures shall apply to SSI recipients (except that the provision requiring termination on the grounds that an individual is engaging in SGA does not apply to recipients of section 1619 special benefits).

Implementing regulations must be issued within 6 months of enactment. Provision expires December 31, 1987.

Effective date.—Applies to disability reviews initiated on or after date of enactment, to all individuals with claims properly pending in the administrative appeals process as of enactment, and to certain court cases. All individual litigants and named members of a class action who have cases properly pending in court as of May 16, 1984, and all individuals who properly request court review of a decision of the Secretary made during the period from March 15, 1984 until 60 days after enactment, would be remanded to the Sec-

retary for redetermination under the new standard. Also the case of any individual who exhausted the administrative appeals process, was an unnamed member of a properly pending class action certified prior to May 16, 1984, and had been notified of the Secretary's final decision on or after a date 60 days prior to the filing of the court action, would be remanded to the Secretary. The Secretary would notify the individual that he had 60 days to request review of his claim under the new standard. If the individual did not request review, the provision would not apply and the Secretary's determination would not be subject to further administrative or judicial review.

The provision would not apply to any case for which the Secretary made a final determination prior to May 16, 1984, and which was not included in the above categories. Such determination would not be subject to further administrative or judicial review.

Applies the provision authorizing payments pending appeal (See item 6) to any individual whose case is remanded by a court under this section and if applicable, who timely requested redetermination. These interim payments would begin with the payment for the month in which the individual elects continued payments. If the individual is ultimately found eligible, full retroactive benefits would be provided. If he is found ineligible, the interim payments would be subject to recovery as overpayments.

Conference agreement

(A) Standard of review

The conference agreement follows the House bill with amendments:

(a) remove causal links between change in medical condition and ability to perform SGA, as follows: the Secretary may terminate disability benefits on the basis that the person is no longer disabled only if there is substantial evidence which demonstrates that (i) there has been any medical improvement in the individual's impairment or combination of impairments (other than medical improvement which is not related to the individual's ability to work) and (ii) the individual is now able to engage in SGA. Make similar changes in wording of exception for advances in medical or vocational therapy or technology (add "related to ability to work") and exception for vocational therapy (add "related to ability to work");

(b) substitute for the House language concerning termination of benefits if evidence in the file or newly obtained shows that the prior determination was clearly erroneous, the requirement that the Secretary may terminate benefits in the absence of medical improvement if substantial evidence (which may be evidence on the record at the time any prior determination of such entitlement to disability benefits was made, or newly obtained evidence which relates to that determination) shows that a prior determination was in error;

(c) allow termination of benefits also where the individual is engaging in SGA (except where he is eligible under section 1619), cannot be located, or fails, without good cause to cooper-

ate in the review or to follow prescribed treatment which could be expected to restore his ability to engage in SGA;

(d) substitute for House language on Secretary obtaining additional medical reports, the requirement that any determination under this section shall be made on the basis of all the evidence available in the individual's case file, including new evidence concerning the individual's prior or current condition which is presented by the individual or secured by the Secretary;

(e) add the requirement that any determination made under this section shall be made on the basis of the weight of the evidence and on a neutral basis with regard to the individual's condition, without any initial inference as to the presence or absence of disability being drawn from the fact that the claimant has previously been determined to be disabled;

(f) add requirement that regulations must be promulgated within 6 months of enactment.

The conference agreement attempts to strike a balance between the concern that a medical improvement standard could be interpreted to grant claimants a presumption of eligibility, which might make it extremely difficult to remove ineligible individuals from the benefit rolls, and the concern that the absence of an explicit standard of review or some alternative standard could be interpreted to imply a presumption of ineligibility or to allow arbitrary termination decisions, which might lead to many individuals being improperly removed from the rolls.

The conferees intend that determinations of continuing eligibility should be made on a basis which is as nearly neutral as possible. The Secretary should reach conclusions on the basis of the weight of the evidence, as applied to the statutory standards specified in this amendment, and without any preconception or presumption as to whether the individual is or is not disabled.

Under the conference agreement, the Secretary would apply the rules specified in the amendment, reaching conclusions under them on the basis of the weight of the evidence. The conference agreement eliminates language in the Senate bill referring to the burden of proof being on the claimant in the case of medical improvement determinations. It also eliminates Senate language with respect to the burden of proof on the Secretary in making other determinations under this provision. This agreement eliminates any confusion that might result from shifting burdens of proof, and is intended to subject determinations under this provision to the same requirements currently established in Section 223(d) of the Social Security Act. That is, the claimant's obligations to establish the existence of his disability with regard to the CDI proceeding are the same as his obligations with regard to an initial determination. Similarly, elimination of this language should not be interpreted as placing a burden of proof on the Secretary. Rather, the language in question was dropped solely to clarify the intent that decisions are to be made on the basis of the weight of the evidence and to avoid any misinterpretation with respect to the role of the claimant and the Secretary in pursuing evidence or with respect to the non-adversarial nature of the proceeding.

(B) Effective date

The conference agreement follows the House bill with respect to the 3-year sunset.

The conference agreement follows the Senate on formulation of effective date with amendments:

(1) The medical improvement standard in these amendments will only apply to:

(i) determinations made by the Secretary on or after the date of enactment; (ii) determinations by the Secretary not yet final on enactment and with respect to which a request for administrative review is made in conformity with the time limits, exhaustion requirements and other provisions of section 205 of the Act and regulations of the Secretary; (iii) determinations with respect to which a request for judicial review was pending on September 19, 1984 involving an individual litigant or a member of a class action identified by name in such pending action on such date (this section refers to individuals identified by name as members of a class action. By this, the legislation means those individuals identified in the pleadings as class representatives); (iv) determinations in which a request for judicial review is made by an individual litigant of a final decision by the Secretary made during the period beginning 60 days prior to the date of enactment and ending on the date of enactment (cases in iii and iv will be remanded to Secretary for determination); (v) unnamed plaintiffs in class action suits certified as of September 19, 1984, as follows: the cases shall be remanded to the Secretary; the Secretary shall notify all plaintiffs via certified mail that they have 120 days from the date of receiving the notice to file a request with the Secretary for review under these amendments.

(2) Add requirement that no class action shall be certified after September 19, 1984, which raises the issue of whether an individual who has had his entitlement to benefits terminated prior to September 19, 1984 should not have had such entitlement terminated without consideration of whether there has been medical improvement in such individual's condition since the time of a prior determination that the individual was under a disability.

The conference agreement provides for an opportunity for redetermination under the new standard of all claimants who are members of class actions which have been certified as of September 19, 1984. However, this is in no way intended to express a view, one way or another, as to whether those classes would otherwise have been found to be properly certified in accordance with the exhaustion and finality requirements of section 205 of the Social Security Act. The conference agreement provides that the existing certified classes will be covered by the new standard in order to resolve the existing controversy over the medical improvement issue in the courts.

This provision prohibits the certification of any class action after September 9, 1984 which raises the issue of whether a medical im-

provement standard should have been applied in a determination of eligibility made prior to the enactment of these amendments.

The section provides that certain specified court cases involving medical improvement be remanded to the Secretary for review under the medical improvement standard established in this Act. Cases pending in court which do not involve medical improvement would not, of course, be remanded to the Secretary for such a review.

The conferees recognize that there will be considerable administrative difficulty in identifying and notifying individuals who are eligible to have their cases redetermined as a result their being unnamend members of class actions certified prior to September 19, 1984. Notwithstanding the administrative difficulty of this task, the conferees expect the Secretary of Health and Human Services to act expeditiously in notifying these individuals of the provisions of this act which are applicable to them.

(C) Benefit payments during remand

The conference agreement follows the Senate amendment.

(D) Retroactive benefits

The conference agreement follows the Senate amendment.

2. Evaluation of Pain

Present law

There is no statutory provision concerning the evaluation of pain (or the use of subjective allegations of pain) in determining eligibility for disability benefits. The definition of disability requires that the person be unable to work by reason of a "medically determinable impairment"—one which results from "anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques."

By regulation, subjective allegations of symptoms of impairments, such as pain, cannot alone be evidence of disability. There must be medical signs or other findings which show there is a medical condition that could be reasonably expected to produce those symptoms and that is severe enough to be disabling.

House bill

Requires the Secretary to conduct a study in conjunction with the National Academy of Sciences on the use of subjective evidence of pain in making disability determinations, and on the state of the art of preventing, reducing or coping with pain. A report on the study is due to the Committees on Ways and Means and Finance no later than April 1, 1985.

Effective date.—On enactment.

Senate amendment

Requires Secretary to appoint 12-member commission consisting of a significant number of medical professionals involved in the study of pain, and representatives from the fields of law, administration of disability insurance programs, and other appropriate fields of expertise to study the use of pain in evaluation of disabil-

ity. Report due to Committees on Ways and Means and Finance no later than December 31, 1986.

Includes in statute the present regulatory policy on the use of evidence of pain in evaluation of disability. Includes title XVI conforming amendment.

Effective date.—Statutory provision applies to determinations made prior to January 1, 1988.

Conference agreement

The conference agreement follows the Senate amendment with amendments:

(a) The study is to be done in consultation with the National Academy of Sciences, and the report is to be filed by December 31, 1985; and

(b) The statutory language providing for an interim standard for evaluation of pain is amended to more accurately reflect current policies.

Effective date.—The interim standard will be in effect only for determinations made prior to January 1, 1987.

3. Multiple Impairments

Present law

There is no statutory provision concerning the consideration of the combined effects of a number of different impairments. The definition of disability requires a finding of a medically determinable impairment of sufficient severity to prevent the person from doing not only his previous work but also any other kind of work that exists in the national economy, considering his age, education and work experience. By regulation, the combined effects of unrelated impairments are considered only if all are severe (and expected to last 12 months). As elaborated in rulings, "inasmuch as a nonsevere impairment is one which does not significantly limit basic work-related functions, neither will a combination of two or more such impairments significantly restrict the basic work-related functions needed to do most jobs".

House bill

Requires the Secretary, in making a determination of whether a person's impairments are of such severity that he or she is unable to engage in substantial gainful activity, to consider the combined effects of all of a person's impairments, regardless of whether any impairment by itself is of such severity. Includes title XVI conforming amendment.

Effective date.—Applies to all determinations pending in the Department or in Court on the date of enactment, or initiated after that date.

Senate amendment

Same, except clarifies that the requirement applies to the determination of whether the individual has a combination of impairments which are *medically* severe without regard to age, education, or work experience. Includes title XVI conforming amendment.

Effective date.—Applies to all determinations made on or after January 1, 1985.

Conference agreement

The conference agreement substitutes alternative language for the provisions in both bills.

Under current policies, if a determination is made that a claimant's impairment is not severe, the consideration of the claim ends at that point. In cases where an individual has several impairments, none of which satisfy the standard for "severe," the individual is judged not disabled without any further evaluation of cumulative impact of his impairments. The conferees believe this policy may preclude realistic assessment of those cases involving individuals who have several impairments which in combination may be disabling. The conference agreement provides, therefore, that in determining whether an individual's impairment or impairments are so severe as to prevent him from engaging in substantial gainful activity, consideration must be given to the combined effect of all the individual's impairments without regard to whether any single impairment considered separately would limit the individual's ability.

The conferees also believe that in the interests of reasonable administrative flexibility and efficiency, a determination that an individual is not disabled may be based on a judgment that an individual has no impairment, or that the medical severity of his impairment or combination of impairments is slight enough to warrant a presumption, even without a full evaluation of vocational factors, that the individual's ability to perform SGA is not seriously affected. The current "sequential evaluation process" allows such a determination and the conferees do not intend to either eliminate or impair the use of that process. The conferees note that the Secretary has stated that it is her plan to reevaluate the current criteria for nonsevere impairments and expect that the Secretary will report to the Committees on the results of this evaluation.

Effective date.—Effective for all determinations made on or after the first day of the month beginning 30 days after the date of enactment.

4. Moratorium on Mental Impairment Reviews

Present law

Under the Disability Amendments of 1980, all DI beneficiaries with nonpermanent impairments must be reviewed at least once every 3 years to assess their continuing eligibility for benefits. Individuals with permanent impairments may be reviewed less frequently. Presently, there is no distinction in the law between the rate of review for individuals with physical and mental impairments.

Under a Secretarial initiative (of June 7, 1983), periodic eligibility reviews have been suspended for certain mental impairment cases involving functional psychotic disorders, pending a revision, with the help of outside mental health experts, of the criteria used for determining disability. Under a subseqent Secretarial action

(announced April 13, 1984), all periodic eligibility reviews have been suspended temporarily.

House bill

Requires publication within 9 months of enactment of revised mental impairment criteria in the Listing of Impairments that are designed to realistically evaluate the person's ability to engage in SGA in a competitive workplace environment, taking account of the recommendations of the disability advisory council (section 304). Delays periodic review of mentally impaired individuals until these revisions are made. The delay would apply to cases on which an initial decision had not been made by the date of enactment and to those cases where an initial decision was made prior to the date of enactment and a timely appeal was pending on or after June 7, 1983.

Periodic reviews where (1) fraud was involved or (2) the individual was engaging in SGA, would continue to be done. SSA could continue to review medical diary cases and make initial determinations but would subsequently redetermine the cases under the revised criteria. If a new decision were favorable, it would take effect as of the time of the first determination. Mentally impaired persons who received an unfavorable initial or continuing eligibility determination between March 1, 1981 and enactment of the bill and who reapplied for benefits within 12 months of enactment would be deemed to have reapplied at the time of the unfavorable determination for the purpose of establishing a period of disability during the period covered by the prior determination, but not for benefit purposes; benefits would be payable only for the twelve months prior to the date of the new application. The provisions also apply to title XVI.

Effective date.—On enactment.

Senate amendment

Similar, except requires publication of revisions within 90 days after enactment, and reapplication provision applies to people who received an unfavorable determination since June 7, 1983 rather than March 1, 1981.

Effective date.—On enactment.

Conference agreement

The conference agreement follows the House provision with amendments to require the Secretary to publish the revised Listing of Impairments within 120 days of enactment.

5. Pre-Termination Notice and Right to Personal Appearance

Present law

A person whose initial claim for disability benefits is denied or who is determined after review not to be disabled may request a reconsideration of that decision within 60 days. In the past, reconsideration has been a paper review of the evidentiary record including any new evidence submitted by the claimant, conducted by the State agency. Under a provision of P.L. 97-455, enacted January 12, 1983, disability beneficiaries determined not to be medically

eligible for benefits must be given opportunity for a face-to-face evidentiary hearing at reconsideration. Such hearings may be provided by the State agency or by the Secretary.

Individuals found ineligible for benefits at reconsideration may request a face-to-face evidentiary hearing before an administrative law judge. The next level of appeal is to SSA's Appeals Council, and finally, to a Federal court.

House bill

Revises determination process for beneficiaries undergoing periodic review in medical cessation cases, to provide for a face-to-face evidentiary review with State agency (upon request of the beneficiary within 30 days) after a preliminary unfavorable decision by the State. If, after the evidentiary interview (or paper review if the beneficiary requests review without the personal interview), the State agency denies benefits, the beneficiary could appeal to the ALJ and succeeding appeals levels. The reconsideration level would be abolished for these review cases.

Requires the Secretary to establish demonstration projects in at least 5 States using this same procedure for initial disability claims, with a report to the Committees on Ways and Means and Finance on the results due no later than April 1, 1985.

The provisions also apply to title XVI.

Effective date.—Revised determination process applies to periodic reviews on or after January 1, 1985; demonstration projects to be initiated as soon as practicable after enactment.

Senate amendment

Requires demonstration projects on providing pretermination face-to-face interviews in disability cessation cases in lieu of face-to-face evidentiary hearings at reconsideration. Report due to Committees on Ways and Means and Finance April 1, 1986.

Requires the Secretary to notify individuals upon initiating a periodic eligibility review that such review could result in termination of benefits and that medical evidence may be submitted.

The provisions also apply to title XVI.

Effective date.—On enactment. Demonstration projects to be established as soon as practicable after date of enactment.

Conference agreement

The conference agreement follows the Senate amendment with respect to the current reconsideration hearing process, the demonstration projects concerning face-to-face pre-termination interviews for continuing disability review issues at the initial rather than the reconsideration level, and the requirement for notification of the possibility of benefit termination as a result of review with an amendment to require the report to Congress on December 31, 1986. The conference agreement follows the House bill with respect to demonstrational projects concerning face-to-face pre-denial interviews for initial disability claims, with an amendment to require the report to Congress on December 31, 1986.

Effective date.—On enactment. Demonstration projects to be established as soon as practicable after date of enactment.

6. Continuation of Benefits During Appeal

Present law

Disability benefits are payable for the month as of which the beneficiary is determined to be ineligible and for the 2 months succeeding. Benefits do not generally continue during appeal.

Under a temporary provision in P.L. 97-455 (as modified by P.L. 98-118), individuals notified of a medical termination decision could elect to have DI benefits and medicare coverage continued during appeal—through the month preceding the month of the ALJ hearing decision. These additional DI benefits are subject to recovery as overpayments if the initial termination decision is upheld (unless they qualify for waiver under the standard provisions for waiver of overpayments). This provison does not apply to terminations made after December 6, 1983. Benefits are last payable under this provision for June 1984 (i.e., the July 1984 benefit check).

House bill

Permanently extends provision (with technical changes) for continuation of DI and SSI benefits during appeal. Requires the Secretary to report to the Committees on Ways and Means and Finance by July 1, 1986, on the impact of the provision on the OASDI trust funds and on appeals to ALJs.

Effective date.—On enactment.

Senate amendment

Extends the provision for continued payment of DI and SSI benefits during appeal to termination decisions made prior to June 1, 1986. (Last month of payments would be for January 1987, i.e., the February 1987 check.)

Effective date.—On enactment.

Conference agreement

The conference agreement follows the House bill with amendments to:

(i) Make permanent the payments through the ALJ hearing for SSI recipients;

(ii) Make the payments through ALJ hearing for DI beneficiaries for termination decisions through December 1987, and benefit payments through June, 1988.

7. Qualifications of Medical Professionals Evaluating Mental Impairments

Present law

There is no statutory requirement concerning qualifications of persons making disability determinations. Under current policy, the State disability agency team making eligibility decisions must consist of a State agency medical consultant (physician) and a State agency disability examiner, both of whom must sign the disability determination.

House bill

Requires that a qualified psychiatrist or psychologist complete the medical portion of any applicable sequential evaluation and residual functional capacity assessment in cases involving mental impairments before a determination may be made that an individual is not disabled.

Effective date.—On enactment.

Senate amendment

Same except modified to require only that every reasonable effort be made to use qualified psychiatrist or psychologist. Also, specifically amends title XVI to make the provision applicable to SSI determinations.

Effective date.—On enactment.

Conference agreement

The conference agreement follows the Senate bill with an amendment to change the effective date to 60 days after enactment. The conferees note that if the Secretary is unable to assure adequate compensation in order to obtain the services of qualified psychiatrists or psychologists because of impediments at the State level, it would be within the Secretary's authority to contract directly for such services.

8. Standards for Consultative Examinations/Medical Evidence

Present law

Consultative exams (CE's) are medical exams purchased by the State agency from physicians and other qualified health professionals outside the agency. By regulation, CE's may be sought to secure additional information necessary to make a disability determination or to check conflicting information. Evidence obtained through a CE is considered in conjunction with all other medical and nonmedical evidence submitted in connection with a disability claim.

There are currently no statutory or regulatory standards requiring CE's in particular cases, or requiring any standard procedures to be followed in the purchase of CE's.

The SSI statute includes a cross-reference to this provision. Any changes in title II will therefore also be made for SSI.

House bill

Requires the Secretary to prescribe regulations which set forth standards for when a CE should be obtained, the type of referral to be made and the procedures for monitoring CE's and the referral process. Permits non-regulatory rules and statements of policy relating to CE's to be issued if they are consistent with the regulations.

Effective date.—On enactment.

Senate amendment

Requires the Secretary to make every reasonable effort to obtain necessary medical evidence from an individual's treating-physician prior to seeking a consultative examination.

Also, requires consideration of all evidence in the case record and development of complete medical history over at least the preceding 12-month period for individuals applying for benefits or undergoing review.

Effective date.—On enactment.

Conference agreement

The conference agreement follows the House bill with respect to the provisions requiring the Secretary to set forth standards for consultative examinations. The conference agreement follows the Senate amendment with an amendment requiring the Secretary to make every reasonable effort to obtain necessary medical evidence from treating physicians prior to evaluating medical evidence obtained from any other source on a consultative basis.

9. Administrative Procedure and Uniform Standards

Present law

The guidelines for making social security disability determinations and all other social security eligibility determinations are contained in the Social Security Act, regulations, social security rulings and the POMS (the Program Operating Manual System):

Regulations, or substantive rules, have the force and effect of law and are therefore binding on all levels of adjudication—state agencies, administrative law judges, SSA's Appeals Council, and the Federal Courts.

The Administrative Procedure Act (APA) requirements do not apply to social security programs because of a general exception for benefit programs. On a voluntary basis, however, SSA issues its regulations in accordance with the public notice and comment rulemaking requirements of the APA.

Rulings consist of interpretative policy statements issued by the Commissioner and other interpretations of law and regulations, selected decisions of the Federal courts, ALJs, the Appeals Council and selected opinions of the General Counsel. Rulings often provide detailed elaboration of the regulations helpful for public understanding. By regulation, the rulings are binding on all levels of administrative adjudication.

The POMS is a compilation of detailed policy instructions and step-by-step procedures for the use of State agency and SSA personnel in developing and adjudicating claims. The POMS is not binding on the Administrative Law Judges, Appeals Council or Courts.

House bill

Requires publication under APA public notice and comment rulemaking procedures of all OASDI and SSI regulations on matters relating to benefits. Requires that only those rules issued under Sections b–e of Section 553 of the APA shall be binding at any level of review.

Effective date.—On enactment.

Senate amendment

Requires publication of regulations setting forth uniform standards for DI and SSI disability determinations under APA procedures. These rules would be binding at all levels of adjudication.

Effective date.—On enactment.

Conference agreement

The conference agreement follows the Senate amendment. While it is not required in the legislation, the conferees urge the Secretary to publish under APA public notice and comment rulemaking procedures all OASDI and SSI regulations which relate to benefits.

10. Acquiescence or Non-Acquiescence In Court of Appeals Decisions

Present law

Claimants for benefits under the Social Security Act may appeal State agency denials through several levels of administrative appeal. A claimant who wishes to continue to pursue appeal may next turn to the Federal district court with jurisdiction over his or her claim. The district court reviews the record as compiled by the agency to determine whether substantial evidence existed for the agency's decision. The district court's decision may be appealed, by the claimant or the Secretary, to the Circuit Court with jurisdiction, and ultimately to the Supreme Court (which may or may not agree to hear the appeal).

Under the Federal judicial system, decisions by a Circuit Court of Appeals constitute binding case law to be followed by all district courts in that circuit. (District courts are not bound by the case law of other circuits and often develop contrary case law on the same issue.)

In general, if two circuits rule differently on a particular issue, the Supreme Court will review the issue to settle the dispute, although frequently the Court will decline to review for an extended period of time if the issue is not ripe for disposition, or if it is not of sufficient importance to warrant immediate attention. If a particular policy is found by the Supreme Court to be unconstitutional, or contrary to the statute, that decision is binding on the agency.

Most social security cases decided in the Federal courts have little value as precedent for SSA decisions, since most reversals of agency determinations rest on the lack of substantial evidence for the agency's position. However, in some instances, the court's opinion is based on matter of a statutory interpretation.

The Social Security Administration abides by the final judgments of Federal courts with respect to the individuals in particular cases. It does not, however, consider itself bound with respect to nonlitigants as far as adopting as agency policy, either in the circuit or nationwide, the interpretation underlying a Circuit Court's decision. If the decision of a Circuit Court is contrary to the Secretary's interpretation of the Social Security Act and regulations, SSA, like some other Federal agencies, issues a ruling stating that it will not adopt the court's decision as agency policy. There are

currently 7 such rulings of nonacquiescence by the Social Security Administration.

House bill

Requires that a decision of a Circuit Court of Appeals interpreting title II of the Social Security Act or its regulations in a manner different from prevailing policy be appealed to the Supreme Court or the Secretary must apply the interpretation underlying that decision as agency policy in the circuit. If the Supreme Court denies review, circuit-wide acquiescence with that interpretation would be required until the Supreme Court ruled on the issue. Includes title XVI conforming amendment.

Effective date.—On enactment, with respect to all circuit court decisions made on or after the date of enactment, and with respect to circuit court decisions for which the Secretary still has an opportunity to request review by the Supreme Court.

Senate amendment

Requires SSA to notify Congress and print in the *Federal Register* (within 90 days after decision date, or on the last date available for appeal, whichever is later) an explanation of the agency's decision to acquiesce or not acquiesce in decisions of the Circuit Courts relating to interpretation of the Social Security Act or of regulations issued under the Act. In cases where the Secretary is acquiescing, the reporting requirement would apply only to significant decisions.

States that nothing in the section shall be interpreted as sanctioning any decision of the Secretary not to acquiesce in the decision of a circuit court.

Effective date.—Applies to Court decisions rendered after the date of enactment.

Conference agreement

The conference agreement deletes both the House and Senate language. The conferees do not intend that the agreement to drop both provisions be interpreted as approval of "non-acquiescence" by a federal agency to an interpretation of a U.S. Circuit Court of Appeals as a general practice. On the contrary, the conferees note that questions have been raised about the constitutional basis of non-acquiescence and many of the conferees have strong concerns about some of the ways in which this policy has been applied, even if constitutional. Thus, the conferees urge that a policy of non-acquiescence be followed only in situations where the Administration has initiated or has the reasonable expectation and intention of initiating the steps necessary to receive a review of the issue in the Supreme Court.

The conferees reaffirm the congressional intent that the Secretary resolve policy conflicts promptly in order to achieve consistent uniform administration of the program. This objective may be achieved in at least two ways other than non-acquiescence when the agency is faced with conflicting interpretations of the meaning and intent of the Social Security Act: either to appeal the issue to the Supreme Court, or to seek a legislative remedy from the Congress.

When there are court rulings which the Secretary believes are inconsistent with the meaning and intent of the law, the Secretary should diligently pursue appropriate appeals channels on an expeditious basis. By refusing to apply circuit court interpretations and by not promptly seeking review by the Supreme Court, the Secretary forces beneficiaries to re-litigate the same issue over and over again in the circuit, at substantial expense to both beneficiaries and the federal government. This is clearly an undesirable consequence. The conferees also feel that in addition to the practical administrative problems which may be raised by non-acquiescence, the legal and Constitutional issues raised by non-acquiescence can only be settled by the Supreme Court. The conferees therefore urge the Administration to seek a resolution of this issue.

The conferees recognize that the realities of litigation do not make it appropriate or feasible to appeal every adverse decision with which the Secretary continues to disagree. In such instances, however, the conferees strongly insist that Congress' judgment as to the appropriate policy should prevail. The conferees expect the Secretary to propose what she believes to be appropriate remedial legislation for congressional consideration.

It is clearly undesirable to have major differences in statutory interpretation between the Secretary and the courts remain unresolved for a protracted period of time. The conferees believe this legislation takes a major step toward removing the obstacles to resolution by clarifying the statutory language and congressional intent.

11. Payment of Costs of Rehabilitation Services

Present law

Presently, States are reimbursed for vocational rehabilitation (VR) services provided to DI and SSI recipients which result in their performance of substantial gainful activity (SGA) for at least 9 months. For such individuals, services are reimbursable for as long as they are in VR and receiving cash benefits. If the individual is reviewed and found to have medically recovered while in VR, cash benefits may continue (under Sections 225(b) and/or 1631(a)(6) of the Social Security Act, work-incentive provisions enacted in 1980). The State agency is reimbursed for these VR services on the same basis as applies to other beneficiaries—only if the beneficiary is returned to SGA for 9 months.

House bill

Allows reimbursement to State agencies for costs of VR services provided to individuals receiving DI benefits under Section 225(b) who medically recover while in VR, and to those receiving SSI disability who are found ineligible for benefits by reason of medical recovery (whether or not receiving SSI under Section 1631(a)(6)). Reimbursable services would be those provided prior to his or her working at SGA for 9 months, or prior to the month benefit entitlement ends, whichever is earlier, and would not be contingent upon the individual working at SGA for at least 9 months. Also provides for reimbursement in cases where DI or SSI disability recipient does not meet the requirement of successful return to SGA because

he refuses without good cause to continue in or cooperate with the VR program.

Effective date.—For individual receiving benefits as a result of section 225(b) (or who are no longer entitled to SSI benefits because of medical recovery) for months after the month of enactment.

Senate amendment

Same, except does not pay for services to those who fail to cooperate or refuse to continue participation in VR, and does not apply to SSI program.

Effective date.—For services rendered to individuals who receive benefits under Section 225(b) for months after the month of enactment.

Conference agreement

The conference agreement follows the House bill with technical amendments to correct the SSI provision, and an amendment to the effective date to apply the provision in the first month following the month after enactment.

The conferees expect that the Secretary will reimburse the State agencies for vocational rehabilitation services provided to a beneficiary who refuses without good cause to continue or to cooperate in a vocational rehabilitation program in such a way as to preclude his successful rehabilitation only in those cases in which the Secretary also suspends that person's disability benefits because of such refusal.

12. Advisory Council on Medical Aspects of Disability

Present law

Section 706 of the Social Security Act provides for the appointment of a 13-member quadrennial advisory council on social security. It is responsible for studying all aspects of the OASI, DI, HI, and SMI programs. The councils are comprised of members of the public.

The next advisory council is scheduled to be appointed in 1985 and to make its final report on December 31, 1986.

There are no requirements in the law pertaining to the creation of advisory councils to deal specifically with disability matters.

House bill

Requires the Secretary to appoint, within 60 days after enactment, a 10-member advisory council on the medical aspects of disability. This would be in addition to the regular quadrennial council. The council, to be composed of independent medical and vocational experts and the Commissioner of SSA *ex officio,* would provide advice and recommendations to the Secretary on disability policies, standards, and procedures. Any recommendations would be published in the Secretary's annual reports.

In addition, Section 307 of the bill requires this advisory council to study alternative approaches to work evaluation for SSI applicants and recipients and the effectiveness of VR services for SSI recipients.

Effective date.—On enactment. Authority for the council expires December 31, 1985.

Senate amendment

Directs next quadrennial advisory council on social security to study the medical and vocational aspects of disability using *ad hoc* panels of experts where appropriate. The study shall include: (1) alternative approaches to work evaluation for recipients of SSI; (2) the effectiveness of vocational rehabilitation programs for DI and SSI recipients; and (3) the question of using specialists for completing medical and vocational evaluations at the State agency level in the disability determination process.

Effective date: Requires Secretary to appoint members by June 1, 1985.

Conference agreement

The conference agreement follows the Senate amendment with amendments providing in detail the issues to be studied by the Advisory Council.

13. Staff Attorneys

Present law

Qualifications for administrative law judge (ALJ) positions are set by the Office of Personnel Management (OPM). To qualify for SSA's GS–15 ALJ position, an applicant must have at least 1 year of qualifying experience at or comparable to the GS–14 grade level in Federal service. Staff attorneys in SSA's Office of Hearings and Appeals (OHA) have the appropriate type of qualifying experience. However, there are no GS–14 positions as OHA staff attorneys; GS–13 is the highest staff attorney position. Prior to a recent decision by OPM, staff attorneys did not have qualifying experience at the necessary grade level. On May 9, 1984, OPM revised this criteria to permit applicants to qualify with 2 years of qualifying experience at the GS–13 level. No GS–14 experience is necessary.

House bill

Requires the Secretary to establish enough GS–13 and GS–14 attorney advisor positions to enable otherwise qualified staff attorneys to compete for ALJ positions. A 90-day interim progress report and a 180-day final report by the Secretary would be required.

Effective date.—On enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with an amendment substituting a requirement for a report to the House Committee on Ways and Means and the Senate Committee on Finance on the actions taken by the Secretary to establish positions to enable staff attorneys to gain qualifying experience of the quality necessary to compete for ALJ positions.

In view of the recent actions by OPM and SSA, the conferees do not believe it is necessary to statutorily require that GS13 and GS14 SSA staff attorney positions be established so as to permit those attorneys to qualify for GS15 ALJ positions. Congress recognizes that such changes are critical in order to ensure the continued availability of qualified attorneys and ALJ's and urges the Secretary to take all reasonable steps to see that the OPM actions result in SSA attorneys becoming qualified for GS15 ALJ positions.

The conferees are concerned, however, upon review of the new examination announcement, that there may not exist within OHA positions in which a staff attorney can now serve and obtain the experience needed to meet the "quality of experience" requirements (in particular, the requirement that cases be listed which demonstrate knowledge, skills and abilities in the rules of evidence and trial procedures, and in decision-making ability).

The conferees expect that, if necessary, the Secretary will establish positions which enable staff attorneys to gain the qualifying experience and quality of experience necessary to compete for ALJ positions.

14. SSI Benefits for Persons Working Despite Severe Impairments

Present law

Under the SSI program, an individual who is able to engage in substantial gainful activity (SGA) cannot become eligible for SSI disability payments. Prior to the enactment of a provision in 1980, a disabled SSI recipient generally ceased to be eligible for SSI when his or her earnings exceeded the level which demonstrates SGA—$300 monthly.

Under Section 1619(a) of the Social Security Act, enacted in the Disability Amendments of 1980, severely disabled SSI recipients who work and earn more than SGA may receive a special payment and thereby maintain medicaid coverage and social services. The amount of the special payment is equal to the SSI benefit they would have been entitled to receive under the regular SSI program were it not for the SGA eligibility cut-off. Special benefit status is thus terminated when the individual's earnings exceed the amount which would cause the Federal SSI payment to be reduced to zero (i.e., the "break-even" level which is currently $713 per month for an individual with earnings). Under Section 1619(b), medicaid and social services may continue beyond this level until earnings reach a level where the Secretary finds: (1) that termination of eligibility for these benefits would not seriously inhibit the individual's ability to continue his employment, or (2) the individual's earnings are not sufficient to allow him to provide for himself a reasonable equivalent of the cash and other benefits that would be available in the absence of earnings.

Section 1619 expired on December 31, 1983. It is being continued administratively under demonstration project authority to those people who were eligible for SSI as of that date.

House bill

Extends Sections 1619 (a) and (b) through June 30, 1986.

In addition, requires the Secretaries of HHS and Education to establish training programs for staff personnel in SSA district offices and State VR agencies, and disseminate information to SSI applicants, recipients, and potentially interested public and private organizations.

Effective date.—On enactment, retroactive to January 1, 1984.

Senate amendment

Same, except extended through June 30, 1987.

Conference agreement

The conference agreement follows the Senate amendment.

15. Frequency of Continuing Eligibility Reviews

Present law

Under a provision enacted in 1980, all DI beneficiaries, except those with permanent impairments, must generally be reviewed at least once every 3 years to assess their continuing eligibility.

Under a provision enacted in 1983 (P.L. 97-455), the Secretary is provided the authority to modify this 3-year review requirement on a state-by-state basis. The appropriate number of cases for review is to be based on the backlog of pending cases, the number of applications for benefits, and staffing levels.

On April 13, 1984, Secretary Heckler announced a temporary, nationwide moratorium on periodic eligibility reviews.

House bill

No provision.

Senate amendment

Requires Secretary to promulgate regulations establishing standards for determining the frequency of continuing eligibility reviews. Final regulations must be issued within 6 months of enactment. Until these regulations are issued, no individual may have more than one periodic review.

Effective date.—On enactment.

Conference agreement

The conference agreement follows the Senate amendment.

16. Monitoring of Representative Payees for Social Security and SSI Beneficiaries

Present law

The Secretary may appoint a representative payee for an individual entitled to social security or SSI benefits when it appears to be in the individual's best interest. Payees must be appointed for individuals receiving SSI who are addicted to drugs or alcohol.

A payee convicted of misusing a social security beneficiary's funds is guilty of a felony, punishable by imprisonment for not more than 5 years and/or a fine of not more than $5,000. A payee convicted of misusing an SSI recipient's funds is guilty of a misde-

meanor, punishable by imprisonment for not more than 1 year and/or a fine of not more than $1,000.

There are no statutory requirements or restrictions on the selection and monitoring of payees.

House bill

No provision.

Senate amendment

Requires Secretary to: (1) evaluate qualifications of prospective payee either prior to or within 45 days following certification, (2) establish a system of annual accountability monitoring for cases in which payments are made to someone other than a parent or spouse living in the same household as the entitled individual, and (3) report to Congress within 6 months of enactment on implementation of the new system and report annually on the number of cases of misused funds and disposition of such cases.

The fine for a first offense by a payee convicted of misusing SSI benefits would be increased to not more than $5,000 and, for both programs, a second offense by a payee would be made a felony punishable by imprisonment for not more than 5 years and/or a fine of not more than $25,000. Individuals convicted of a felony under this provision could not be selected as a payee.

Effective date.—On enactment.

Conference agreement

The conference agreement follows the Senate amendment with amendments to require a report to Congress within 270 days after the date of enactment.

While the conference agreement recognizes that it may be necessary to appoint a representative payee prior to completion of the investigation required by the provision, the managers believe that the Secretary should do so cautiously. In particular, the managers direct the Secretary to establish procedures under which large lump-sum payments of retroactive benefits will not ordinarily be paid to new representative payees until the investigation of their suitability has been successfully completed. These procedures should, however, allow for reasonable exceptions where the funds are urgently needed, for example, to avoid eviction or to meet major medical needs.

Where State institutions serve as representative payees for their residents, the annual reporting requirements of the conference agreement do not apply. This exemption, however, is not designed to shield institutional payees from accountability but rather to allow the Secretary the flexibility to establish more appropriate and effective systems of auditing the use of social security funds by such institutions. The managers wish to make clear their intention that the Secretary implement a thorough and comprehensive audit methodology to assure that Social Security Act benefits for residents of State institutions are not misused. These onsite reviews would be expected to involve, at a minimum, discussions with institution staff, an audit of a sample of residents accounts in each institution and on-ward interviews and observations to ensure that benefits are being properly used. At a minimum, each such institu-

tion should be audited once every three years. This 3-year cycle will allow the Secretary to audit one-third of such institutions each year—thus permitting a more thorough audit than would be possible on an annual basis. The managers further expect that the initial report on the implementation of this section of the bill will include a full exposition of the audit procedures which the Secretary will utilize in monitoring State institutions which act as representative payees.

17. Fail-Safe

Present law

The main source of funding for the DI program is that portion of the social security tax allocated by law for disability. At present, the disability portion of the tax is 1 percent (employee and employer combined). It is scheduled to rise to 1.2 percent in the 1990's and to 1.42 percent thereafter. If revenues from the tax exceed amounts needed for benefit payments, the excess is placed in the trust fund reserve. If revenues fall short of the amount needed, the reserve is drawn on to make up the difference. (To make timely benefit payments it is necessary to have at least one month's benefit payments in reserve at the beginning of each month—8 to 9 percent of annual expenditures. Reserves must be sufficient to meet this percentage requirement at the beginning of each month notwithstanding any decline in revenues or increase in expenditures during the year.)

To help assure continued benefit payments over the next few years in the event of adverse conditions, the social security legislation enacted in 1983 authorized interfund borrowing for calendar years 1983–1987. In addition, the 1983 legislation required the OASDI Board of Trustees, whenever it determines that trust fund reserves may become less than 20 percent, to immediately submit to Congress a report setting forth its recommendations for statutory adjustments necessary to restore the reserve ratio. This report to the Congress by the Trustees must provide specific information as to the extent to which benefits would have to be reduced, payroll taxes increased, or some combination thereof, in order to restore the trust fund reserve ratio.

House bill

No provision.

Senate amendment

Requires the Secretary to adjust disability insurance benefit increases as necessary to prevent the DI trust fund balance from falling below a defined threshold. The Secretary would be required to notify the Congress by July 1 in any year in which the amount of the DI trust fund at the start of the next year is projected to be less than 20 percent of the year's expenditures. If Congress took no action, the Secretary must scale back the next cost-of-living increase for disability insurance beneficiaries as necessary to keep the fund balance from falling below 20 percent. If further necessary to keep the fund from falling below 120 percent, the Secretary

BEST COPY AVAILABLE

would also be required to scale back the increase in the benefit formula used to determine new benefit awards the following year.

Effective date.—On enactment.

Conference agreement

The conference agreement follows the House bill.

18. Measures to Improve Compliance with Federal Law

Present law

The States are responsible, on a voluntary basis, for determining whether individuals are disabled under the meaning of the Social Security Act. Under the law, States administering the program are required to make disability determinations in accord with Federal law and the standards and guidelines established by the Department of Health and Human Services. All benefit payments and administrative costs of the States making these determinations are financed or reimbursed by the Disability Insurance Trust Fund.

The law provides for the Secretary to commence actions to take over the disability determination process if a State fails to follow Federal rules. A series of procedural steps must be complied with before such Federal assumption can be accomplished. The Secretary may not commence making disability determinations earlier than 6 months after: (1) finding, after notice and opportunity for hearing, that a State agency is substantially out of compliance with Federal law; (2) developing all procedures to implement a plan for partial or complete assumption of the disability determinations which grants hiring preference to the State employees; and (3) the Secretary of Labor determines that the State has made fair and equitable arrangements to protect the interests of displaced employees.

Prior to the Secretary's announcement in April 1984 of a temporary nationwide moratorium on periodic reviews, several States on their own initiative were failing to conduct eligibility reviews in accordance with Federal law and standards. Eighteen States were operating under court-ordered eligibility criteria or pending court order.

House bill

No provision.

Senate amendment

Requires the Secretary to federalize disability determinations in a State within 6 months of finding that the State is not in substantial compliance with Federal law and standards. (Such finding must be made within 16 weeks of the time a State's failure to comply first comes to the attention of the Secretary. During this 16-week period, at the discretion of the Secretary, a hearing could be afforded to the State.) The Secretary would be required, to the extent feasible, to meet the requirements of present law regarding the transfer of functions. Provision expires December 31, 1987.

Effective date.—On enactment.

Conference agreement

The conference agreement follows the Senate bill with an amendment to require the Secretary to waive any applicable personnel ceilings and other restrictions in carrying out the provisions. Under the conference agreement, protections are being given to State agency employees. If the Secretary assumes the functions of the Disability Determinations Agency, then preference must be given in hiring to agency employees who are capable of performing the requisite duties. The conferees further intend that the Secretary should make every effort throughout the 180 day period to comply with the requirements in the law concerning the hiring of State employees and the protection of their interests in the event of the Secretary assuming the functions of the State agency.

19. Separability Clause

The Conference agreement includes a separability clause stating that the constitutional invalidity of any provision of the bill shall not affect the other provisions of the bill.

Dan Rostenkowski,
J.J. Pickle,
Andrew Jacobs, Jr.,
Richard A. Gephardt,
Jim Shannon,
Wyche Fowler, Jr.,
Harold Ford,
Barber B. Conable, Jr.,
Bill Archer,
Willis D. Gradison, Jr.,
Carroll Campbell,
Managers on the Part of the House.

Bob Dole,
Bob Packwood,
Bill Roth,
John C. Danforth,
Russell B. Long,
Lloyd Bentsen,
D.P. Moynihan,
Managers on the Part of the Senate.

○

98TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { 98–1043

SMALL BUSINESS UNEMPLOYMENT TAX ACT

SEPTEMBER 20, 1984.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ROSTENKOWSKI, from the Committee on Way and Means, submitted the following

REPORT

[To accompany H.R. 6112]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 6112) to amend the Tax Equity and Fiscal Responsibility Act of 1982 with respect to the effect of the 1985 increase in the Federal unemployment tax rate on certain small business provisions contained in State unemployment compensation laws, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

CONTENTS

	Page
I. Summary of Bill	1
II. Explanation of Bill	1
III. Budget Effects of the Bill	3
IV. Other Matters Required to be Discussed Under the Rules of the House	4
V. Changes in Existing Law Made by the Bill, as Reported	5

I. SUMMARY OF BILL

H.R. 6112 would amend the Tax Equity and Fiscal Responsibility Act of 1982 to allow small employers in the State of Illinois, whose State tax rate is capped at a level less than the full FUTA tax credit of 5.4 percent, to claim the full FUTA tax credit while the State unemployment tax cap is gradually raised to 5.4 percent.

II. EXPLANATION OF BILL

PRESENT LAW

Under present law, employers pay a gross Federal unemployment tax [FUTA] of 3.5 percent of the first $7,000 in wages paid to each employee. Employers can receive a credit against their FUTA liability

31–006 O

BEST COPY AVAILABLE

H783-19

for State unemployment taxes paid up to a maximum of 2.7 percent of the first $7,000 in wages paid to each employee. If an employer's State unemployment tax rate is based on experience (that is, the rate bears a relation to the amount of unemployment benefits paid to his former employees), he can claim the full FUTA tax credit of 2.7 percent even though his State tax is less than 2.7 percent. If an employer's State tax rate is not based on experience, he can claim a FUTA tax credit only in the amount of State taxes actually paid.

The Tax Equity and Fiscal Responsibility Act of 1982 [TEFRA] raises the gross FUTA tax to 6.2 percent and the FUTA credit to 5.4 percent effective January 1, 1985. Under TEFRA, certain industries in New York State whose State taxes were capped and thus not based on experience, will be allowed to claim the full FUTA credit of 5.4 percent even though their State taxes are capped at a rate less than 5.4 percent. They can claim the full FUTA credit while their State tax rate is gradually increased to 5.4 percent.

H.R. 6112

H.R. 6112 would allow small employers in Illinois, whose State tax rate is capped at an amount less than 5.4 percent and thus not experience rated, to claim the full FUTA tax credit of 5.4 percent for a period of 4 years, during which time the State tax cap would be raised to 5.4 percent. This provision is identical to the transition provision allowed in TEFRA for industries in New York whose State tax rate was capped at an amount less than 5.4 percent.

The bill calls for the State to increase the State tax cap for small employers from the rate payable on August 10, 1982, the effective date of the transition provision for New York industries, to 5.4 percent by 20 percent a year beginning on January 1, 1985. Small employers in the State will be allowed to claim the full FUTA tax credit during this period.

REASONS FOR CHANGE

The committee found that small employers in Illinois do pay their fair share of unemployment taxes even at the capped State tax rate. The cap was instituted by the State because the State method of experience rating employers was biased against small employers. Without the cap, the State found that the tax rate for small employers would increase to 6.7 percent, the maximum rate in the State. At a 6.7-percent rate, small employers would be paying a disproportionate share of State unemployment taxes.

The effect of Federal law allowing the full FUTA credit only when the employer's State tax rate is based on experience is to force the State to increase the tax on small employers to 5.4 percent on January 1, 1985. They are currently capped at 3.7 percent. Such a substantial and immediate increase in their State unemployment taxes would be a great burden to small employers in the State.

III. Budget Effects of the Bill

1. Committee estimate

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives the following statement is made: The committee agrees with the cost estimate prepared by the Congressional Budget Office which is included below.

2. Statement regarding new budget authority and tax expenditures

With respect to clause 2(l)(3)(B) of rule XI of the Rules of the House, the committee advises that the required information pertaining to new budget authority or new or increased tax expenditures, to the extent applicable to this bill, is contained in the Congressional Budget Office estimate included below.

3. Cost estimate prepared by the Congressional Budget Office

In compliance with clause 2(l)(3)(C) of rule XI, requiring a cost estimate prepared by the Congressional Budget Office, the following report prepared by the Congressional Budget Office is provided.

U.S. Congress,
Congressional Budget Office,
Washington, DC, September 19, 1984.

Hon. Dan Rostenkowski,
Chairman, Committee on Ways and Means, House of Representatives, Washington, DC.

Dear Mr. Chairman: In accordance with section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 6112, which amends the Tax Equity and Fiscal Responsibility Act of 1982 with respect to the increase in the 1985 Federal unemployment tax rate on certain small businesses, as ordered reported by the Committee on Ways and Means. The bill allows States to phase-in an increase in their State unemployment tax rates for firms that are not experience rated and have a payroll of less than $50,000 per calendar quarter.

H.R. 6112 would decrease fiscal year revenues and budget authority, and increase tax expenditures by $16 million in 1985, $15 million in 1986, $11 million in 1987, $5 million in 1988, and $1 million in 1989.

With best wishes,

Sincerely,

Rudolph G. Penner.

IV. Other Matters Required To Be Discussed Under the Rules of the House

1. VOTE OF THE COMMITTEE

In compliance with clause 2(l)(2)(B) of the rule XI, the following statement is made: The bill, H.R. 6112, was ordered favorably reported to the House of Representatives by a voice vote.

2. OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of the rule XI, the committee states that the provisions of this bill are consistent with its oversight findings, as discussed in the explanation section of this report.

3. OVERSIGHT BY COMMITTEE ON GOVERNMENT OPERATIONS

With respect to clause 2(l)(3)(D) of rule XI, the committee advises that no oversight findings or recommendations have been submitted to the committee by the Committee on Government Operations regarding the subject of this bill.

4. INFLATION IMPACT

In compliance with clause 2(l)(4) of the rule XI, the committee states that the enactment of this bill is not expected to have any significant inflationary impact on prices and costs in the operation of the national economy.

V. Changes in Existing Law Made by the Bill, As Reported

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Section 271 of the Tax Equity and Fiscal Responsibility Act of 1982

SEC. 271. INCREASE IN FEDERAL UNEMPLOYMENT TAX WAGE BASE AND RATE.

(a) Increase in Wage Base.—Paragraph (1) of section 3306(b) (defining wages) is amended by striking out "$6,000" each place it appears and inserting in lieu thereof "$7,000".

(b) Increase in Rate.—

(1) In general.—* * *

* * * * * * *

[(b)] *(d)* Effective Dates.—

(1) Subsections (a) and (b).—The amendments made by subsections (a) and (b) shall apply to remuneration paid after December 31, 1982.

(2) Subsection (c).—The amendments made by subsection (c) shall apply to remuneration paid after December 31, 1984.

(3) TRANSITIONAL RULE FOR CERTAIN EMPLOYEES.—

(A) IN GENERAL.—Notwithstanding section 3303 of the Internal Revenue Code of 1954, in the case of taxable years beginning after December 31, 1984, and before January 1, 1989, a taxpayer shall be allowed the additional credit under section 3302(b) of such Code with respect to any employee covered by a qualified specific industry provision if the requirements of subparagraph (B) are met with respect to such employee.

(B) REQUIREMENTS.—The requirements of this subparagraph are met for any taxable year with respect to any employee covered by a specific industry provision if the amount of contributions required to be paid for the taxable year to the unemployment fund of the State with respect to such employee are not less than the product of the required rate multiplied by the wages paid by the employer during the taxable year.

(C) REQUIRED RATE.—For purposes of subparagraph (B), the required rate for any taxable year is the sum of—

(i) the rate at which contributions were required to be made under the specific industry provision as in effect on August 10, 1982, and

(ii) the applicable percentage of the excess of 5.4 percent over the rate described in clause (i).

(D) APPLICABLE PERCENTAGE.—For purposes of subparagraph (C), the term "applicable percentage" means—

(i) 20 percent in the case of taxable year 1985,

(ii) 40 percent in the case of taxable year 1986,

(iii) 60 percent in the case of taxable year 1987, and

(iv) 80 percent in the case of taxable year 1988.

(E) QUALIFIED SPECIFIC INDUSTRY PROVISION.—For purposes of this paragraph, the term, "qualified specific industry provision" means a provision contained in a State unemployment compensation law (as in effect on August 10, 1982)—

(i) which applies to employees in a specific industry or to an otherwise defined type of employees, and

(ii) under which employers may elect to make contributions at a specified rate (without experience rating) which exceeds 2.7 percent.

(4) TRANSITIONAL RULE FOR CERTAIN SMALL BUSINESSES—

(A) IN GENERAL.—Notwithstanding section 3303 of the International Revenue Code of 1954, in the case of taxable years beginning after December 31, 1984, and before January 1, 1989, a taxpayer shall be allowed the additional credit under section 3302(b) of such Code with respect to any employee covered by a qualified small business provision if the requirements of subparagraph (B) are met with respect to such employee.

(B) REQUIREMENTS.—The requirements of this subparagraph are met for any taxable year with respect to any employee covered by a qualified small business provision if the amount of contributions required to be paid for the taxable

year to the unemployment fund of the State with respect to such employee are not less than the product of the required rate multiplied by the wages paid by the employer during the taxable year.

(C) REQUIRED RATE.—For purposes of subparagraph (B), the required rate for any taxable year is the sum of—

(i) 3.1 percent, plus

(ii) the applicable percentage (as defined in paragraph (3)(D)) of the excess of 5.4 percent over the rate described in clause (i).

(D) QUALIFIED SMALL BUSINESS PROVISION.—For purposes of this paragraph, the term "qualified small business provision" means a provision contained in a State unemployment compensation law (as in effect on the date of the enactment of this paragraph) which provides a maximum rate at which an employer is subject to contribution for wages paid during a calendar quarter if the total wages paid by such employer during such calendar quarter are less than $50,000.

(E) DEFINITION.—For purposes of this paragraph, the term "wages" means the remuneration subject to contributions under the State unemployment compensation law, except that for purposes of subparagraph (D) the amount of total wages paid by an employer shall be determined without regard to any limitation on the amount subject to contribution.

○